

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

EDMOND GRANT P/K/A “EDDY GRANT”,
GREENHEART MUSIC LIMITED, a United
Kingdom Limited Company, and
GREENHEART MUSIC LIMITED, an
Antigua and Barbuda Limited Company,

Plaintiffs,

-against-

DONALD J. TRUMP and DONALD J.
TRUMP FOR PRESIDENT, INC.

Defendants.

Civil Action No. 1:20-cv-07103-JGK

**DEFENDANTS’ STATEMENT OF
UNDISPUTED MATERIAL FACTS IN
SUPPORT OF MOTION FOR
PARTIAL SUMMARY JUDGMENT**

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Pursuant to Local Civil 56.1, defendants Donald J. Trump (“Trump”) and Donald J. Trump For President, Inc. (the “Company”) (collectively, “Defendants”) respectfully submit this statement of undisputed material facts in support of their motion for partial summary judgment that seeks dismissal of “Count II” of the Complaint of plaintiffs Edmond Grant p/k/a “Eddy Grant” (“Grant”), Greenheart Music Limited, a United Kingdom Limited Company (“Greenheart UK”) and Greenheart Music Limited, an Antigua and Barbuda Limited Company (“Greenheart Antigua”) (collectively, “Plaintiffs”).

The Song and the Registrations

1. Plaintiffs allege that Grant wrote, recorded and produced the 3-minute-48 second song entitled “Electric Avenue” (sometimes referred to as the “Song”). (Dkt. 1, Compl. ¶ 9).

2. According to a “Confirmatory Assignment of RIGHTS UNDER COPYRIGHT,” dated August 29, 2020 and signed by Grant (the “Confirmatory Assignment”), Grant composed a musical composition of the Song in or about 1983 (the “Composition”). (Declaration of Jason Kasner (“Kasner Decl.”) ¶ 2, Ex. A).

3. According to the Confirmatory Assignment, Grant “produced and performed” a sound recording of the Composition in or about 1983 (the “Sound Recording”). (*Id.*)

4. The Sound Recording was released to the public, and thus published, in the United States in or about 1983. (Dkt. 1, Complaint ¶ 25).

5. The Composition was registered in the United States Copyright Office (the “Copyright Office”) on or about February 2, 1983 under Registration Number PA0000164029 (the “PA Registration”). (Kasner Decl. ¶ 2, Ex. B; *see also* Dkt. No. 1, Compl. ¶ 22, Ex. A).

6. On or about March 22, 2002, Plaintiffs registered the work “Eddy Grant: the greatest hits” (hereafter, “Grant Greatest Hits”) in the Copyright Office under registration number SR000344006 (the “SR Registration”). (Kasner Decl. ¶ 4, Ex. C; *see also* Dkt. 1, Compl. ¶ 30, Ex. B).

7. The field “Authorship on Application” for the SR Registration states: “compilation of recordings, artwork: Greenheart Music, Ltd., employer for hire.” (*Id.*)

8. The field “Previous Registration” for the SR Registration states: “Recordings Preexisting.” (*Id.*)

9. The field “Basis of Claim” for the SR Registration states: “New Matter: compilation of recordings, remixed sounds, & photography.” (*Id.*)

10. When asked to identify the factual and legal basis for any contention that the SR Registration covers the sound recording of Electric Avenue, Plaintiffs, after lodging various objections, stated as follows:

Greenheart Antigua is the beneficial copyright owner of the copyright in the Recording. The US Copyright Registration No. SR0000344006 covers the sound recording contained on the compilation album Eddy Grant: the greatest hits. The Recording is contained on the album. London Records, the foreign subsidiary of Warner Music UK Limited (“Warner”), pursuant to the May 3, 2011 letter agreement between Warner and Greenheart UK, the licensing arm of Greenheart Antigua (the “Agreement”), registered the subject SR copyright registration, which reverted back to Greenheart Antigua on the expiration of the Agreement. [Kasner Decl. ¶ 5, Ex. D at No. 16].

11. Plaintiffs do not assert that any copyright registrations cover the works they alleged to have been infringed other than SR Registration and PA Registration. (*See* Kasner Decl. ¶ 6, Ex. E at No. 41).

12. Plaintiffs have neither produced copies of the actual copyright registration certificates, nor have they produced any information regarding the prosecution of the registration, or any deposit materials submitted in connection with the registration. Rather, Plaintiffs rely solely on printouts from the U.S. Copyright Office database as evidence of the registrations they allege apply to the Song. (*See* Kasner Decl. ¶ 6, Ex. E at No. 41).

The Tweet and Animated Video

13. Plaintiffs assert that on August 12, 2020, President Trump published a tweet (the “Tweet”) from his personal Twitter account. The Tweet contained a 55-second animated video (the “Animation”), which included the alleged unauthorized use of 40 seconds of the Song. (Dkt. 1, Compl. ¶¶ 35, 38-40).

14. Plaintiffs have characterized the Animation as “a campaign video deriding the Democratic Party’s 2020 nominee for President, Former Vice President Joseph Biden” and as “clearly an attempt to denigrate the Democratic Party’s 2020 presidential nominee, Former Vice President Joseph Biden.” Plaintiffs also asserted that the Animation “appears to be an endorsement of [President] Trump’s 2020 presidential re-election campaign to ‘Keep America Great’ (aka ‘KAG’).” (Dkt. 1, Compl. ¶¶ 1, 36-37).

15. On or about August 13, 2020, Grant’s counsel, Wallace E.J. Collins, III, Esq. sent a takedown notice to Twitter demanding that the Tweet be removed. (Kasner Decl. ¶ 7, Ex. F at ¶ 4).

16. Twitter complied with Mr. Collins’ demand and removed the Tweet on or about September 1, 2020. (Kasner Decl. ¶ 8, Ex. G).

17. Mr. Collins claimed that, on the same day he sent the takedown notice to Twitter, he mailed a cease-and-desist letter to Defendants at an address (or addresses) he found on the internet. Mr. Collins admitted that he did not use any tracking or verification delivery method for the cease-and-desist letter. (Kasner Decl. ¶ 6, Ex. F at ¶¶ 5-8).

Procedural History

18. On or about September 1, 2020, Plaintiffs filed a Complaint that asserted two claims of copyright infringement against both Defendants: (1) copyright infringement of the musical composition of the Song; and (2) copyright infringement of the sound recording of the Song. Attached to the Complaint were what Plaintiffs claimed were printouts of records from the U.S. Copyright Office that evidenced the registration of the copyrights for both the sound recording and composition of the Song. (See Dkt. 1, Compl. ¶¶ 54-71, Exs. A & B).

19. Defendants moved to dismiss the Complaint in its entirety on the grounds that use of the Song in the Animation was a fair use, as a matter of law. (*See* Dkt. 18). By Opinion and Order dated September 28, 2021, the Court denied the motion. (Dkt. 48).

Respectfully submitted,

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